

## **RULE 107. ORDERS PRIOR TO JUDGMENT**

**(a) Motions for orders prior to judgment.** At any time prior to judgment in any action under this chapter in which the court has personal jurisdiction over the parties, the court may order the following:

(1) parental rights and responsibilities for any minor children, including health insurance and child support;

(2) appointment and payment of a guardian ad litem;

(3) participation in a parental education program;

(4) paternity testing;

(5) psychological or other evaluations;

(6) investigation by the Department of Health and Human Services pursuant to 19-A M.R.S. § 905;

(7) possession of owned or rented real and personal property pending the final judgment;

(8) payment of debts and obligations;

(9) sale of any property of the parties, along with the disposition of the proceeds;

(10) interim spousal support;

(11) a job search;

(12) payment by either party to the other or to the party's attorney of sufficient money for costs and counsel fees for the defense or prosecution of any action or any motion under this chapter. Execution for counsel fees shall not issue until after entry of final judgment;

(13) prohibition of either party from imposing any restraint on the personal liberty of the other;

(14) enforcement of compliance with the court's orders by appropriate process as the court can order in other actions; and

(15) dissolution or modification of a preliminary injunction or an attachment or trustee process.

No orders prior to judgment may be entered without notice to the parties or upon motion. The motion may be accompanied by a draft order granting the relief requested.

In any action under this chapter in which the court lacks personal jurisdiction over the defendant, the court may at any time prior to judgment, and governed by the same notice provisions, enter any of the foregoing orders that it deems proper that do not involve the payment of, or the allocation of responsibility for the payment of, money.

**(b) Expedited Hearings.** A party, or a guardian ad litem, may request that a hearing on a motion be expedited. Such requests shall be in the form of a motion for expedited hearing and shall demonstrate extraordinary circumstances in the particular case that justify an expedited hearing. The request for an expedited hearing shall be considered in light of all relevant factors, including:

(1) the court's ability to provide time for expedited hearing, and the effect on other cases awaiting hearing;

(2) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the best interest of a child or the parental rights of a party;

(3) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the health or financial standing of a party;

(4) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the court's ability to render a full and fair decision on any issue present in the case;

(5) any unreasonable delay on the part of the moving party in filing the motion;

(6) any conduct on the part of either party impairing a fair and just resolution of the issues.

The moving party must determine and report to the court whether any other party objects to the requested relief and the motion for expedited hearing. The motion shall contain a notice stating the time for a response to the motion. Responses to a motion for expedited hearing shall be filed in writing within 7 days of the notice of the motion.

The court may rule on a motion for expedited hearing without actual notice to other parties if the moving party has made a reasonable and good faith effort to notify the other parties or if delay would defeat the purposes of the motion. No ruling granting substantive relief shall be made without notice and opportunity to be heard.

### **Advisory Notes**

#### **June 2008**

Rule 107 is based on Rule 80(d) and 19-A M.R.S. §§ 105 and 904 relating to preliminary matters. It would also implement the recommendation of the Family Division Task Force to establish a procedure to seek an expedited hearing. It follows 80(d) with appropriate adjustments to fit it into the context of the Family Division Rules. The list of actions the court may take, as stated in 80(d), is separated out into individually numbered subparagraphs and some new categories of actions are added that reflect current practice and provide consistency with Rule 110A(b)(1) which is derived from FAM DIV III.A.1. The rule clarifies an uncertain issue as to whether the court has authority to order the sale of property pending a divorce as well as order the disposition of the proceeds. The new rule adds provision for appointment and payment of a guardian ad litem, as presently found in Rule 80(e).

This rule does not change the current practice before the magistrates that permits an oral motion for an order prior to judgment. The sentence requiring the filing a child support affidavit when child support is an issue is deleted because that language is provided by Rule 108.

Rule 107 deletes the language found in Rule 80(d) that provided for a hearing 7 days after a party had notice of a motion. It was deleted because no substantive standard existed for considering that motion, and the procedure was seldom used. The rule substitutes a requirement for a written response within 7 days of notice of the motion, leaving scheduling of any hearing to the court. The rule also outlines criteria to grant a request for an expedited hearing if the circumstances of the case warrant immediate court intervention.